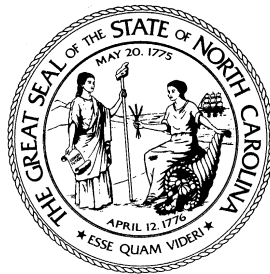


**Biennial Report**  
**to the**  
**General Assembly**  
**of North Carolina**  
**2015-2017**



**THE GENERAL STATUTES COMMISSION**



**REPORT OF THE  
GENERAL STATUTES COMMISSION  
2015-2017**

**TO THE GENERAL ASSEMBLY OF NORTH CAROLINA:**

The General Assembly adopted the General Statutes as the general law in North Carolina in 1943 and at the time assigned to the Division of Legislative Drafting and Codification of Statutes of the Attorney General's Office the duty of keeping the laws as clear and concise as possible by means of continuous statutory research and correction.

The General Statutes Commission was created by the General Assembly in 1945 for the purpose of advising the Division of Legislative Drafting in its continuous statutory research and correction, in the publication of the General Statutes, and in making a continuing study of all matters involved in the preparation and publication of modern codes of law. In 1951, the General Assembly expressly authorized the General Statutes Commission to recommend substantive changes in the law. In 1981, the General Assembly expressly authorized the General Statutes Commission to receive and consider proposed changes in the law recommended by The American Law Institute, by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission), or by other learned bodies.

Effective June 1, 2011, the General Assembly transferred the General Statutes Commission and its staff and the remaining functions of the Division of Legislative Drafting and Codification of Statutes from the Department of Justice to the General Assembly. The transfer was made by Session Law 2011-97. Under that session law, the Commission is located within the General Assembly for administrative purposes but continues to exercise all its prescribed statutory powers independently.

**MEMBERSHIP AND MEETINGS OF THE COMMISSION DURING THE BIENNIUM**

Five new members were appointed during the 2015-2017 biennium. Mr. Peter G. Pappas of Greensboro was appointed by the President of the North Carolina Bar Association to replace Ms. Jean T. Adams of Durham. Representative Robert P. Bryan, III, of Charlotte was appointed by the Speaker of the House to replace Representative John M. Blust of Greensboro. Mr. Thomas O. Murry of Cary was appointed by the Governor to replace the Honorable H. William Constangy of Charlotte. Senator Tamara Barringer of Cary was appointed by the President Pro Tempore of the Senate to replace former Senator Fletcher L. Hartsell, Jr., of Concord. Representative Ted Davis, Jr., of Wilmington was appointed by the Speaker of the House to replace former Representative Robert P. Bryan, III, of Charlotte.

Ten members were reappointed during the biennium. Professor Andrew J. Haile of Greensboro was reappointed by the Dean of Elon University School of Law. Professor H. Beau Baez III of Monroe was reappointed by the Dean of Charlotte School of Law. Professor Richard

T. Bowser of Raleigh was reappointed by the Dean of Campbell University School of Law. Professor Marguerite I. Most of Hillsborough was reappointed by the Dean of Duke University School of Law. Professor John J. Korzen of Kernersville was reappointed by the Dean of Wake Forest University School of Law. Ms. Sabra J. Faires of Cary was reappointed by the General Statutes Commission. Mr. Michael W. Mitchell of Raleigh was reappointed by the Governor. Professor Judith Welch Wegner of Hillsborough was reappointed by the Dean of The University of North Carolina School of Law. Professor Susan E. Hauser of Raleigh was reappointed by the Dean of North Carolina Central University School of Law. Mr. Starkey Sharp of Kitty Hawk was reappointed by the President of the North Carolina State Bar.

The General Statutes Commission meets regularly on the first Friday of each month except July and August. Special meetings may be called by the chairman or by any two members of the Commission whenever the work of the Commission requires. The Commission's policies are available through the Revisor of Statutes, Bill Drafting Division, North Carolina General Assembly, 300 N. Salisbury Street, Suite 401, Raleigh, North Carolina 27603-5925; telephone (919) 733-6660; fax (919) 715-5459.

## **PUBLICATION OF THE GENERAL STATUTES**

A 2015 replacement set of the General Statutes of North Carolina, consisting of 23 volumes plus two index volumes, was published partly in December 2015 and partly in January 2016. Because of the split shipment, the cover color of the 2015 replacement set was changed for this one time only to dark blue to better enable subscribers to distinguish between the new volumes and the volumes of the 2013 replacement set that had not yet been replaced. The 23 volumes in the 2015 replacement set include two additional volumes that resulted from the splitting of volume 13 and the regrouping of the material in volumes 16 and 17 into three volumes. The 2013 replacement set consisted of 21 volumes plus two index volumes.

A 2015 edition of the Annotated Rules of North Carolina was published in December 2014, and a supplement was published in May 2015.

A 2016 edition of the Annotated Rules of North Carolina was published in November 2015, and a supplement was published in May 2016.

A 2016 Interim Supplement to the 2015 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2016 Replacement Index, consisting of two volumes, were published in October 2016. The 2016 Interim Supplement is a cumulative supplement that contains the acts of a general and permanent nature enacted by the General Assembly at the 2016 First and Second Extra Sessions and the 2016 Regular Session.

A 2017 Special Supplement to the 2015 replacement set of the General Statutes of North Carolina, consisting of one volume, is anticipated to be published in the spring of 2017. The 2017 Special Supplement will contain any acts of a general and permanent nature enacted by the

General Assembly at the 2016 Third and Fourth Extra Sessions (no legislation was enacted at the Fifth Extra Session).

A 2017 edition of the Annotated Rules of North Carolina was published in December 2016, and a supplement will be published in May 2017.

## **DRAFTING COMMITTEES OF THE GENERAL STATUTES COMMISSION**

The General Statutes Commission has appointed the following committee of experts, to assist it in work on major projects.

### **Trusts Drafting Committee**

The General Statutes Commission originally created this Committee in 1973 to draft a revision of the trusts laws of the State. The Committee's initial project was a revision of Chapter 36 of the General Statutes, containing the trusts statutes of North Carolina, which was enacted as Chapter 685 of the 1977 Session Laws. Since that time, the Committee has continually provided the General Statutes Commission with expertise in the areas of estates, trusts, and property and has prepared legislative proposals for the Commission's consideration; many of these have been enacted by the General Assembly. The Committee continues to work on other projects. Members of the Committee are Professor James B. McLaughlin, Jr., Mr. J. Stanley Atwell, Professor Alfred L. Brophy, and Mr. Thomas F. Wiggins. The Revisor of Statutes serves as an ex officio member of the Committee.

## **COOPERATION WITH OTHER GROUPS**

The General Statutes Commission has cooperated and coordinated with the North Carolina General Assembly, the North Carolina Administrative Office of the Courts, the North Carolina Conference of Clerks of Superior Court, the North Carolina Association of Registers of Deeds, the North Carolina Human Trafficking Commission, the North Carolina Department of the Secretary of State, the North Carolina High School Athletic Association, the Department of Athletics of the University of North Carolina at Chapel Hill, the North Carolina Bankers Association, the North Carolina Bar Association, Facebook, Google, and others. The General Statutes Commission continues its interest in the work of the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission) and The American Law Institute.

The General Statutes Commission and its Trusts Drafting Committee have continued their efforts to circulate their proposals among individuals and groups believed to be interested in the various topics considered by the Commission.

The General Statutes Commission welcomes and solicits recommendations from any source as to areas for further legislation. Recommendations may be brought to the attention of

the Revisor of Statutes, Bill Drafting Division, North Carolina General Assembly, 300 North Salisbury Street, Suite 401, Raleigh, North Carolina 27603-5925; telephone (919) 733-6660; fax (919) 715-5459. The Revisor of Statutes may also be contacted for legislative history of the Commission's legislative proposals.

## LEGISLATION RECOMMENDED TO THE 2015 GENERAL ASSEMBLY

The following chart shows bills recommended by the General Statutes Commission to the 2015 General Assembly and their disposition:

<b>General Statutes Commission – Recommended Bill Chart 2015-2016</b> Some bills were introduced in each chamber; the bill number of the one enacted is shown in bold				
<b>Bill Number</b>	<b>Short Title</b>	<b>GSC Docket</b>	<b>Long Title As Introduced</b>	<b>Session Law</b>
<a href="#"><u>SB 124</u></a>	Modernize Assumed Business Name Statutes	DN 06-7	An Act to Modernize the Law Governing the Use of Assumed Business Names and to Make Related Conforming and Technical Amendments.	2016-100
<a href="#"><u>SB 123</u></a>	Uniform Fraudulent Transfer Act	DN 14-7	An Act to Amend Uniform Fraudulent Transfer Act to Adopt the Amendments Approved by the Uniform Law Commission in 2014 and to make Related Conforming and Technical Amendments.	2015-23
<a href="#"><u>SB 119</u></a>	GSC Technical Corrections 2015	DN 15-1	An Act to Make Technical Corrections to the General Statutes and Session Laws.	2015-264
<a href="#"><u>HB 1062</u></a> <a href="#"><u>SB 805</u></a>	Fiduciary Access to Digital Assets.	DN 15-2	An Act to Enact the Revised Uniform Fiduciary Access to Digital Assets Act and Make Conforming Amendments to the General Statutes.	2016-53
<a href="#"><u>HB 1060</u></a> <a href="#"><u>SB 807</u></a>	Conform Full-payment Check Law to UCC.	DN 15-3	An Act to Conform to the Comparable Provision of the Uniform Commercial Code this State's Law on Accord and Satisfaction of a Disputed Debt Through the Tendering of a Negotiable Instrument as Full Payment of the Debt.	2016-52

<b>General Statutes Commission – Recommended Bill Chart 2015-2016</b> Some bills were introduced in each chamber; the bill number of the one enacted is shown in bold				
<b>Bill Number</b>	<b>Short Title</b>	<b>GSC Docket</b>	<b>Long Title As Introduced</b>	<b>Session Law</b>
<a href="#">HB 1061</a> <a href="#">SB 806</a>	Preserve Tenancy by the Entirety.	DN 15-6	An Act to Make Conforming Amendments to Clarify that Tenancy by the Entirety is Preserved in this State in Light of the United States Supreme Court Decision in <i>Obergefell v. Hodges</i> .	Not enacted
<a href="#">HB 1064</a> <a href="#">SB 821</a>	GSC Technical Corrections 1.	DN 16-1	An Act to Make Technical Corrections to the General Statutes.	Not enacted
<a href="#">HB 1063</a> <a href="#">SB 822</a>	GSC Technical Corrections 2.	DN 16-1	An Act to Make Conforming Changes to Two Sections of the General Statutes.	Not enacted

## RECOMMENDED LEGISLATION, 2017

During the biennium, the General Statutes Commission has received suggestions for statutory changes from various sources including practicing attorneys, State officials and agencies, and from its Trusts Drafting Committee and its own membership. In addition, the Commission has from time to time undertaken studies of specific areas of the law to determine the need for statutory change. The Commission reviewed all suggested changes and docketed those that it believed warranted further consideration. Some have resulted in recommended bills, and others are still under consideration.

The proposals set out below have been considered by the Commission and found to warrant recommendation to the General Assembly. A brief description of each proposal is set out and, in addition, a separate memorandum for each proposal to supplement this report will be made available to the members of the General Assembly.

The Commission, acting pursuant to G.S. 164-13, therefore has recommended enactment of proposals in the following areas:

1. **An act to postpone the implementation of new Article 14A of Chapter 66 of the General Statutes, which revised the law on assumed business names.** This proposal postpones from July 1, 2017, to July 1, 2018, the implementation of Article 14A of Chapter 66 of the General Statutes (Assumed Business Name Act) as enacted by S.L. 2016-100. Article 14 of Chapter 66 of the General Statutes (Business Under Assumed Name Regulated) would continue

to apply until July 1, 2018.

(GSC DN 06-7)

2. **An act to provide for the judicial reformation of wills to correct mistakes and the judicial modification of wills to achieve the testator's tax objectives and to revise the North Carolina Uniform Trust Code to achieve consistency in the reformation of trusts with the reformation of wills.** This proposal achieves consistency in the judicial reformation of wills and trusts to correct mistakes and the judicial modification of wills and trusts to achieve the testator's or settlor's tax objectives. The court may reform the terms of a will or trust, if the terms are ambiguous, to conform the terms to the testator's or settlor's intent if it is proved by clear and convincing evidence what the testator's or settlor's intent was and that the terms were affected by a mistake of fact or law, whether in expression or inducement. To achieve a testator's or settlor's tax objectives, the court may modify the terms of a will or trust in a manner that is not contrary to the testator's or settlor's probable intent and provide that the modification has retroactive effect.

The proposal makes related conforming and technical amendments and authorizes the printing of drafters' comments.

(GSC DN 14-5)

3. **An act to provide for the nonademption of specific devises in certain cases.** Generally, when real or personal property is specifically devised under a will and the property is no longer found in the testator's estate at the time of the testator's death, the specific devise is adeemed—rendered ineffective. This proposal, which is based on Section 2-606 of the Uniform Probate Code, provides rules of construction that would apply to prevent the ademption of specifically devised property in certain situations and to allow inquiry into the testator's intent to determine whether a specific devise has adeemed.

(GSC DN 14-6)

4. **An act to make conforming amendments to clarify that tenancy by the entirety is preserved in this State in light of the United States Supreme Court decision in *Obergefell v. Hodges*.** This proposal amends this State's statutes dealing with tenancy by the entirety to preserve this traditional form of owning real property by married couples in light of the United States Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which effectively mandated recognition of marriages between persons of the same sex. If enacted, the proposal will provide stability and certainty to the thousands of married couples in this State who currently own their homes as tenants by the entirety.

(GSC DN 15-6)

5. **An act to enact the Revised Uniform Athlete Agents Act.** This proposal



replaces the Uniform Athlete Agents Act (UAAA), enacted by S.L. 2003-375 as Article 9 of Chapter 78C of the General Statutes, with a modified version of the Revised Uniform Athlete Agents Act (RUAAA) that was approved in 2015 by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). Like UAAA, RUAAA is designed to protect student athletes and educational institutions from the unscrupulous practices of some athlete agents who seek to represent the student athletes in negotiating professional-sports-services contracts and endorsement contracts.

The proposal continues the protections of the UAAA but expands them to include, for example:

- Extending the protections to former student athletes who have exhausted their eligibility to compete as student athletes within the past six months.
- Updating the definition of "athlete agent" to make it more explicit.
- Removing the existing reciprocal registration process, thereby requiring all athlete agents seeking to represent student athletes in this State to use the State's registration application.
- Expanding the information that an applicant for registration as an athlete agent must disclose in the application.
- Requiring an athlete agent to notify the educational institution if the athlete agent and a student athlete have an agency contract or relationship before the student athlete enrolls in the educational institution.
- Requiring an athlete agent to notify the educational institution before attempting to contact a student athlete or if a student athlete attempts to contact the athlete agent.
- Requiring an athlete agent to notify the educational institution if the athlete agent knows or should have known of a violation of the act that could render a student athlete ineligible to compete as a student athlete.
- Providing a student athlete with a statutory right of action against an athlete agent.
- Increasing the existing criminal penalties and adding new criminal penalties.
- Increasing the maximum amount of the civil penalty that can be assessed by the Secretary of State and providing several factors that the Secretary of State must consider in assessing the civil penalty.

The proposal also authorizes the printing of official and drafters' comments.

(GSC DN 15-7)

In addition to these proposals, the Commission has recommended for introduction its usual technical corrections bill, which corrects errors in grammar, erroneous statutory references, and other obvious errors and makes other technical changes in the General Statutes. This year's technical corrections bill includes technical corrections recommended by the Commission in 2016 that were not enacted.

**PENDING DOCKETS** (dockets not covered in pending legislation)

- (1) Uniform Partnership Act (1992)  
(GSC DN 93-8)
- (2) Retaining Safeguards for Public Records  
(GSC DN 97-6)
- (3) Certification of Questions of Law  
(GSC DN 05-2)
- (4) Gender Neutralization of Constitution and Statutes  
(GSC DN 09-5)
- (5) Revised Uniform Unincorporated Nonprofit Association Act  
(GSC DN 10-2)
- (6) Uniform Partition of Heirs Property Act.  
(GSC DN 11-3)
- (7) Uniform Electronic Legal Material Act  
(GSC DN 11-7)
- (8) Official and Drafters Comments  
(GSC DN 12-9)
- (9) Partition of Property  
(GSC DN 13-2)
- (10) Uniform Act on Prevention of and Remedies for Human Trafficking  
(GSC DN 13-3)
- (11) G.S. 1A-1, Rule 53 (Referees)  
(GSC DN 14-8)
- (12) G.S. 1A-1, Rule 70 (Judgment for Specific Acts; Vesting Title)  
(GSC DN 14-9)
- (13) Definitions in Mini Brooks Act  
(GSC DN 15-4)
- (14) Conforming Amendments Based on *Obergefell*  
(GSC DN 16-3)

(15) Streamline Partition Sales  
(GSC DN 16-4)

(16) Collaborative Law  
(GSC DN 16-5)

Please note that older dockets may be kept open if they present ongoing issues.

## **CONCLUSION**

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2017 General Assembly will be carried over into the next biennium.

In submitting this report, the Commission wishes to make grateful acknowledgment of the cooperation and support received from Mr. Paul Y. Coble, Legislative Services Officer of the North Carolina General Assembly, and Ms. Kory Goldsmith, Director of the Bill Drafting Division of the North Carolina General Assembly. The Commission is especially indebted to Mr. Floyd M. Lewis, Revisor of Statutes, Ms. P. Bly Hall, Assistant Revisor of Statutes, Mr. David C. Unwin, Staff Attorney with the Bill Drafting Division of the North Carolina General Assembly, and Ms. Veronica Scott, Legislative Secretary with the Bill Drafting Division of the North Carolina General Assembly, for their dedicated service during the biennium. In addition, the Commission wishes to express its appreciation for the valuable services rendered by Professor H. Beau Baez III, former Senator Fletcher L. Hartsell, Jr., former Representative Robert P. Bryan, III, Ms. Jean T. Adams, Representative John M. Blust, and the Honorable H. William Constangy, who served as members of the Commission during the biennium.

The Commission wishes to express its appreciation for the efforts of the following persons who provided valuable assistance with the Commission's review of the Revised Uniform Fiduciary Access to Digital Assets Act: Kim Crouch, Director of Government Affairs, North Carolina Bar Association; Ms. Linda Funke Johnson, Chair of the Legislative Committee of the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association; Ms. Jean Carter, Chair of the Digital Assets Subcommittee of the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association; Paula A. Kohut, Member of the Digital Assets Subcommittee of the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association; Ms. Whitney Campbell Christensen, Ward and Smith, P.A.; and Mr. Doug Miskew, Public Sector Group, LLC.

The Commission also wishes to express its appreciation for the efforts of Professor James P. Beckwith, North Carolina Central School of Law, and Mr. Armand A. Perry, Co-Chair of the Commercial Law and UCC Committee of the Business Law Section of the North Carolina Bar Association, for their assistance with the Commission's review of amendments to this State's version of Article 3 of the Uniform Commercial Code on accord and satisfaction of a disputed

debt through the tendering of a negotiable instrument as full payment of the debt.

The Commission also wishes to express its appreciation for the efforts of the following persons who provided valuable assistance with the Commission's review of the Revised Uniform Athlete Agents Act: Mr. Paul Pogge, Associate Athletic Director, University of North Carolina at Chapel Hill; Mr. Rodney Maddox, Chief Deputy Secretary of State, Mr. Michael J. Arnold, Senior Advisor of Policy and Governmental Relations, North Carolina Department of the Secretary of State; and Ms. Whitney Frye, General Counsel, North Carolina High School Athletic Association.

The Commission further wishes to express its appreciation for the efforts of Mr. James E. Creekman and other members of the Real Property, Family Law, and Estates and Trusts sections of the North Carolina Bar Association and other groups, who provided valuable assistance with the Commission's ongoing review of this State's statutes in light of the United States Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

The Commission is most appreciative of the dedicated service of the members of the General Statutes Commission's Trusts Drafting Committee, as well as the assistance of the many groups that have cooperated with the Commission in its work, the members of the Bar, and others who have offered assistance and advice during the biennium.

This 7th day of April 2017.

Respectfully submitted,

Andrew J. Haile, Chairman  
Richard T. Bowser, Vice Chairman

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**THE GENERAL STATUTES COMMISSION**  
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